

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL NOTE

HB 2413 - SB 2388

February 24, 2022

SUMMARY OF BILL: Authorizes certain municipalities, which have received a report from the Department of Transportation (TDOT) detailing areas experienced blocked crossings, resulting in impeded commercial access or potential public safety risk, to request that the Department provide assistance in applying to federal funds pursuant to the Fixing America's Surface Transportation (FAST) Act (49 U.S.C. § 22907), or other federal law, for the purpose of funding projects to address such blocked crossings. Requires TDOT to provide the following assistance, at a minimum and at no cost to any such municipality, in preparation of a grant or awards proposal:

- Drafting the grant or award proposal;
- Gathering the necessary supporting documentation for a proposal;
- Providing legal and accounting services relative to the proposal; and
- Submitting the proposal on behalf of a municipality.

Authorizes any aforementioned municipality to enact an ordinance that requests TDOT to designate a portion of municipal road blocked, as evidenced by any such report, as part of the general highway plan of this state.

Requires TDOT, within one month of a copy of any such passed ordinance, to investigate portions of municipal roads described and notify the respective railroad companies operating on tracks at the designated crossings on such roads. Requires that, upon three years extending from the receipt of such ordinance, and if such municipality does not receive a subsequent report, such commissioner shall reject the municipality's request. If, upon three years extending from the receipt of such ordinance, the municipality receives such a subsequent report, TDOT must:

- Accept the municipality's request by finding that those portions of municipal roads are of sufficient importance to be included in the general highway plan of the state;
- Designate portions of such roads as part of the general highway plan of the state; and
- Order the elimination of grade crossings on such roads.

Requires that any railroad company owning or operating the track or tracks at a grade crossing which is ordered to be eliminated as a result of this legislation, bears 80 percent of the total cost of such eliminations. The total cost must include:

- The construction of an underpass or overpass substituted for the grade crossing and the approaches thereto;

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- The surveys and preparations of the plans and estimates of cost for the underpass or overpass crossing ordered by the Commissioner or the Commissioner's designee; and
- Any revision of the grade and layout of the railroad tracks directly made necessary by the grade separation.

Specifies that the cost of metal resurfacing or road pavement required in elimination of a grade crossing is not included in the calculation of total cost.

Creates a rebuttable presumption in any action brought against a train operator for wrongful death or injuries resulting from a stationary train blocking a crossing that the operator acted negligently with regard to the block crossing if the operator was notified by law enforcement of the urgent need for an emergency vehicle to use the crossing to provide emergency medical services and the operator refused to move the train.

Creates Class E felony offense for any train operator who fails to move a train in the aforementioned instance.

Establishes an affirmative defense to prosecution of the operator, which must be proven by a preponderance of the evidence, that:

- The train tracks were blocked such that the train could not safely move in either direction;
- The operator could not move the train without causing harm to another individual; or
- There existed mechanical issue with the train preventing the operator from being able to move the train.

FISCAL IMPACT:

**Increase State Expenditures - \$136,500/FY22-23/Highway Fund
 \$130,900/FY23-24/Highway Fund
 \$130,900/FY24-25/Highway Fund
 \$20,130,900/FY25-26/Highway Fund
 \$4,130,900/FY26-27 and Subsequent Years/Highway Fund**

Other Fiscal Impact – The extent to which local governments will incur expenditures and the extent of any state or local expenditures that will be offset by federal grants are unknown and cannot be determined with reasonable certainty.

Assumptions:

- Pursuant to Public Chapter 178 of 2021, the TDOT's Freight and Logistics Division compiled information on blocked crossings in the state from October 1, 2020 through September 30, 2021.
- On November 1, 2021, TDOT released a study regarding blocked crossings statewide.
- For such period of study, there were a total of 866 blocked crossing instances statewide.

- This legislation could result in a number of instances statewide for which a grade crossing will be eliminated.
- It is assumed, for purposes of this fiscal analysis, that only the top five grade crossings in the state would be eliminated as a result of this legislation.
- Based on information from TDOT, the cost to eliminate one grade crossing is assumed to be approximately \$20,000,000 on average.
- The cost for eliminating all 5 grade crossings would total \$100,000,000 (\$20,000,000 x 5 grade crossings).
- This legislation requires that the cost of any eliminations is generally covered 80 percent by the railroad operator or owner and 20 percent by the state.
- The railroad operator or owner would incur approximately \$80,000,000 (\$100,000,000 x 80 percent).
- An increase in state expenditures of \$20,000,000 (\$100,000,000 x 20 percent).
- This legislation requires 3 years from the date of any such ordinance until any such grade crossing would be eliminated.
- Assuming that all 5 grade crossing ordinances are promptly passed by affected local governments in FY22-23, the earliest the state would begin to incur such additional expenditures would be FY25-26.
- It is assumed that such grade crossings could be eliminated within a one-year timespan.
- It is possible that there could be additional grade crossings eliminated in the FY25-26 as well as subsequent years.
- Due to multiple unknown variables, the number of such additional grade crossing eliminations is unknown, but for purposes of assumption, it is assumed that there will be at least one grade crossing annually, beginning in FY26-27 and subsequent years.
- Beginning in FY26-27, a recurring increase in state expenditures of \$4,000,000 (\$20,000,000 x 20 percent).
- The extent to which local governments will incur expenditures and the extent of any state or local expenditures that will be offset by federal grants are unknown and cannot be determined with reasonable certainty.
- Based on information from TDOT, it would need two additional Transportation Program Monitor positions to effectively run this program, which will require drafting grants and awards, gathering necessary supporting documentation including information from each respective municipality, and submitting proposals to the federal government on behalf of any such municipality.
- The Department will require two additional Transportation Program Monitor positions beginning in FY22-23.
- There will be a recurring increase in state expenditures of \$130,872 [(\$50,004 salary + \$15,232 benefits + \$200 supplies) x 2 Transportation Program Monitor positions] in FY22-23 subsequent years.
- There will be a one-time increase in state expenditures associated with these positions of \$5,600 (\$2,000 computers + \$3,600 network/technology).
- An increase in state expenditures in FY22-23 to the Highway Fund of \$136,472 (\$130,872 + \$5,600).
- An increase in state expenditures in FY23-24 to the Highway Fund of \$130,872.
- An increase in state expenditures in FY24-25 to the Highway Fund of \$130,872.

- An increase in state expenditures in FY25-26 to the Highway Fund of \$20,130,872 (\$20,000,000 + \$130,872).
- A recurring increase in state expenditures in FY26-27 and subsequent years of \$4,130,872 (\$4,000,000 + \$130,872).
- Due to multiple unknown variables, including, but not limited to, the number of grade crossings that will be eliminated, the time such crossing will take to be eliminated, the total cost of each individual project, and ancillary expenditures that could be incurred by state and local government, a precise impact to state and local government cannot be reasonably determined.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink that reads "Krista Lee Carsner". The signature is written in a cursive, flowing style.

Krista Lee Carsner, Executive Director

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